

PART 1—INVESTMENT SECURITIES

Sec.

- 1.1 Authority, purpose, and scope.
- 1.2 Definitions.
- 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.
- 1.4 Calculation of limits.
- 1.5 Safe and sound banking practices; credit information required.
- 1.6 Convertible securities.
- 1.7 Securities held in satisfaction of debts previously contracted; holding period; disposal; accounting treatment; non-speculative purpose.
- 1.8 Nonconforming investments.

INTERPRETATIONS

- 1.100 Indirect general obligations.
- 1.110 Taxing powers of a State or political subdivision.
- 1.120 Prerefunded or escrowed bonds and obligations secured by Type I securities.
- 1.130 Type II securities; guidelines for obligations issued for university and housing purposes.

AUTHORITY: 12 U.S.C. 1 *et seq.*, 24 (Seventh), and 93a.

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§ 1.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1 *et seq.*, 12 U.S.C. 24 (Seventh), and 12 U.S.C. 93a.

(b) *Purpose.* This part prescribes standards under which national banks may purchase, sell, deal in, underwrite, and hold securities, consistent with the authority contained in 12 U.S.C. 24 (Seventh) and safe and sound banking practices.

(c) *Scope.* The standards set forth in this part apply to national banks, District of Columbia banks, and federal branches of foreign banks. Further, pursuant to 12 U.S.C. 335, State banks that are members of the Federal Reserve System are subject to the same limitations and conditions that apply to national banks in connection with purchasing, selling, dealing in, and underwriting securities and stock. In addition to activities authorized under this part, foreign branches of national banks are authorized to conduct international activities and invest in securities pursuant to 12 CFR part 211.

§ 1.2 Definitions.

(a) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set forth in appendix A to 12 CFR part 3 (or comparable capital guidelines of the appropriate Federal banking agency) as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161 (or under 12 U.S.C. 1817 in the case of a state member bank); plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (a)(1) of this section, as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161 (or under 12 U.S.C. 1817 in the case of a state member bank).

(b) *General obligation of a State or political subdivision* means:

(1) An obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation; or

(2) An obligation payable from a special fund or by an obligor not possessing general powers of taxation, when an obligor possessing general powers of taxation, including property taxation, has unconditionally promised to make payments into the fund or otherwise provide funds to cover all required payments on the obligation.

(c) *Investment company* means an investment company, including a mutual fund, registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a-8.

(d) *Investment grade* means a security that is rated in one of the four highest rating categories by:

(1) Two or more NRSROs; or

(2) One NRSRO if the security has been rated by only one NRSRO.

(e) *Investment security* means a marketable debt obligation that is not predominantly speculative in nature. A security is not predominantly speculative in nature if it is rated investment grade. When a security is not rated, the security must be the credit equivalent of a security rated investment grade.

(f) *Marketable* means that the security:

(1) Is registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*;

(2) Is a municipal revenue bond exempt from registration under the Securities Act of 1933, 15 U.S.C. 77c(a)(2);

(3) Is offered and sold pursuant to Securities and Exchange Commission Rule 144A, 17 CFR 230.144A, and rated investment grade or is the credit equivalent of investment grade; or

(4) Can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

(g) *NRSRO* means a nationally recognized statistical rating organization.

(h) *Political subdivision* means a county, city, town, or other municipal corporation, a public authority, and generally any publicly-owned entity that is an instrumentality of a State or of a municipal corporation.

(i) *Type I security* means:

(1) Obligations of the United States;

(2) Obligations issued, insured, or guaranteed by a department or an agency of the United States Government, if the obligation, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the obligation;

(3) Obligations issued by a department or agency of the United States, or an agency or political subdivision of a State of the United States, that represent an interest in a loan or a pool of loans made to third parties, if the full faith and credit of the United States has been validly pledged for the full and timely payment of interest on, and principal of, the loans in the event of non-payment by the third party obligor(s);

(4) General obligations of a State of the United States or any political subdivision;

(5) Obligations authorized under 12 U.S.C. 24 (Seventh) as permissible for a national bank to deal in, underwrite, purchase, and sell for the bank's own account, including qualified Canadian government obligations; and

(6) Other securities the OCC determines to be eligible as Type I securities under 12 U.S.C. 24 (Seventh).

(j) *Type II security* means an investment security that represents:

(1) Obligations issued by a State, or a political subdivision or agency of a

State, for housing, university, or dormitory purposes;

(2) Obligations of international and multilateral development banks and organizations listed in 12 U.S.C. 24 (Seventh);

(3) Other obligations listed in 12 U.S.C. 24 (Seventh) as permissible for a bank to deal in, underwrite, purchase, and sell for the bank's own account, subject to a limitation per obligor of 10 percent of the bank's capital and surplus; and

(4) Other securities the OCC determines to be eligible as Type II securities under 12 U.S.C. 24 (Seventh).

(k) *Type III security* means an investment security that does not qualify as a Type I, II, IV, or V security, such as corporate bonds and municipal revenue bonds.

(l) *Type IV security* means:

(1) A small business-related security as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(53)(A), that is rated investment grade or is the credit equivalent thereof, that is fully secured by interests in a pool of loans to numerous obligors.

(2) A commercial mortgage-related security that is offered or sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that is rated investment grade or is the credit equivalent thereof, or a commercial mortgage-related security as described in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), that is rated investment grade in one of the two highest investment grade rating categories, and that represents ownership of a promissory note or certificate of interest or participation that is directly secured by a first lien on one or more parcels of real estate upon which one or more commercial structures are located and that is fully secured by interests in a pool of loans to numerous obligors.

(3) A residential mortgage-related security that is offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that is rated investment grade or is the credit equivalent thereof, or a residential mortgage-related security as described in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41)), that is

rated investment grade in one of the two highest investment grade rating categories, and that does not otherwise qualify as a Type I security.

(m) *Type V security* means a security that is:

- (1) Rated investment grade;
- (2) Marketable;
- (3) Not a Type IV security; and
- (4) Fully secured by interests in a pool of loans to numerous obligors and in which a national bank could invest directly.

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

(a) *Type I securities.* A national bank may deal in, underwrite, purchase, and sell Type I securities for its own account. The amount of Type I securities that the bank may deal in, underwrite, purchase, and sell is not limited to a specified percentage of the bank's capital and surplus.

(b) *Type II securities.* A national bank may deal in, underwrite, purchase, and sell Type II securities for its own account, provided the aggregate par value of Type II securities issued by any one obligor held by the bank does not exceed 10 percent of the bank's capital and surplus. In applying this limitation, a national bank shall take account of Type II securities that the bank is legally committed to purchase or to sell in addition to the bank's existing holdings.

(c) *Type III securities.* A national bank may purchase and sell Type III securities for its own account, provided the aggregate par value of Type III securities issued by any one obligor held by the bank does not exceed 10 percent of the bank's capital and surplus. In applying this limitation, a national bank shall take account of Type III securities that the bank is legally committed to purchase or to sell in addition to the bank's existing holdings.

(d) *Type II and III securities; other investment securities limitations.* A national bank may not hold Type II and III securities issued by any one obligor with an aggregate par value exceeding 10 percent of the bank's capital and surplus. However, if the proceeds of each issue are to be used to acquire and lease real estate and related facilities

to economically and legally separate industrial tenants, and if each issue is payable solely from and secured by a first lien on the revenues to be derived from rentals paid by the lessee under net noncancellable leases, the bank may apply the 10 percent investment limitation separately to each issue of a single obligor.

(e) *Type IV securities—(1) General.* A national bank may purchase and sell Type IV securities for its own account. A national bank may deal in Type IV securities that are fully secured by Type I securities. Except as described in paragraph (e)(2) of this section, the amount of the Type IV securities that a bank may purchase and sell is not limited to a specified percentage of the bank's capital and surplus.

(2) *Limitation on small business-related securities rated in the third and fourth highest rating categories by an NRSRO.* A national bank may hold small business-related securities, as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(53)(A), of any one issuer with an aggregate par value not exceeding 25 percent of the bank's capital and surplus if those securities are rated investment grade in the third or fourth highest investment grade rating categories. In applying this limitation, a national bank shall take account of securities that the bank is legally committed to purchase or to sell in addition to the bank's existing holdings. No percentage of capital and surplus limit applies to small business related securities rated investment grade in the highest two investment grade rating categories.

(f) *Type V securities.* A national bank may purchase and sell Type V securities for its own account provided that the aggregate par value of Type V securities issued by any one issuer held by the bank does not exceed 25 percent of the bank's capital and surplus. In applying this limitation, a national bank shall take account of Type V securities that the bank is legally committed to purchase or to sell in addition to the bank's existing holdings.

(g) *Securitization.* A national bank may securitize and sell assets that it holds, as a part of its banking business. The amount of securitized loans and